

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bob Tang

Title: INTERNET TIME MULTIPLEXED CIRCUIT
CONNECTION FOR WIRE SPEED CONNECTION AKIN
TO PSTN SWITCHED CIRCUIT CONNECTION
SUITABLE FOR MULTIMEDIA/VOICE/FAX/REALTIME
APPLICATIONS

Appl. No.: 09/779,939

Filing Date: 2/9/2001

Patent No.: 7,545,799

Grant Date: 6/9/2009

Examiner: Ajit Patel

Art Unit: 2617

Confirmation 4135
Number:

**RENEWED REQUEST FOR RECONSIDERATION OF PATENT TERM
ADJUSTMENT UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully renew their request for reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent. The USPTO indicated in the letter mailed April 16, 2009 (copy attached), that a decision on the Applicants' initial request was being held in abeyance until after the actual patent date. As noted, the patent issued on June 9, 2009, as U.S. Patent No. 7,545,799.

The Patent Office determined that the patent was entitled to 173 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 844 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1579 days
(b) Total Applicant delay:	735 days
Final PTA Determination:	844 days

Applicants therefore respectfully request that the patent be accorded 844 days PTA.

The patent is not subject to a terminal disclaimer.


Because this is a renewed request, Applicants do not believe that any fee is due, the fee having been paid with the Applicants' original request on January 30, 2009. However, if a fee is due, and should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date July 22, 2009

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By 

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APR 16 2009

OFFICE OF PETITIONS

In re Application of	:	
Bob Tang	:	
Application No. 09/779,939	:	ON APPLICATION FOR
Filed: February 9, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 088245-3380	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705" filed January 30, 2009. Applicant requests that the determination of patent term adjustment be corrected from 64 days to 834 days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, a decision is being held in **abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within three years. See 37 CFR 1.703(b). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to the correctness

of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

It is acknowledged that applicant is correct that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

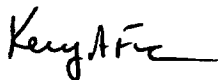
(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is noted that a Request for Continued Examination (RCE) was filed in this application on July 26, 2006.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney, Christina Tartera Donnell, at (571) 272-3211.



Kery A. Fries
Senior Legal Advisor
Office Patent Legal Administration

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-3380

Application Number: 09/779939

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	02/09/2001	0		
	14 month From Application date	04/09/2002	424		
	3 Year Period Starts	02/09/2004	1,095		
Edit Delete	Non-Final Office Action	06/16/2004	1,223	(799)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	09/15/2004	1,314		
	Non-Final Office Action + 3 months	09/16/2004	1,315		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	01/15/2005	1,436		
Edit Delete	Notice of Non-Compliance	05/05/2005	1,546	(110)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/04/2005	1,729		(415), (414) 415
Edit Delete	Final Office Action	01/26/2006	1,812		
	Final Office Action + 3 months	04/26/2006	1,902		
Edit Delete	Final Office Action Response Received at PTO	05/26/2006	1,932		
Edit Delete	Advisory Action	06/20/2006	1,957		
Edit Delete	Request For Continued Examination	07/26/2006	1,993	(898) 1569	91
	3 Year Period Stopped	07/26/2006	1,993		
Edit Delete	Non-Final Office Action	10/04/2006	2,063		
	Non-Final Office Action + 3 months	01/04/2007	2,155		
Edit Delete	Non-Final Office Action	02/21/2007	2,203		
	Non-Final Office Action + 3 months	05/21/2007	2,292		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/21/2007	2,384		(229), (92) 229
Edit Delete	Non-Final Office Action	11/05/2007	2,460		
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Edit Delete	Request For Continued Examination	10/08/2008	2,798		

Edit Delete	Notice of Allowance	11/04/2008	2,825	
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	Issue Fee Paid + 4 months	05/30/2009	3,032	
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	Totals:		1,579	735
	PTA:			844

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Foley & Lardner LLP